



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 15, 2005

Mr. Charles D. Olsen
Haley Davis
510 North Valley Mills Drive, Suite 600
Waco, Texas 76710

OR2005-05270

Dear Mr. Olsen:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 225194.

The City of Bellmead Police Department (the "department"), which you represent, received a request for any and all police records pertaining to two named individuals and a specified address. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses common law privacy. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, the requestor asks for all information concerning two named individuals. Thus, we believe that the individuals' rights to privacy have been implicated. Thus, any records pertaining to the named individuals as possible suspects, arrestees, or criminal defendants would generally be required to be withheld under

¹We note that some of the submitted information is not responsive to the instant request. This ruling only addresses information responsive to the request at hand. *See generally* Gov't Code §§ 552.002, .021, .227, .351.

section 552.101 and *Reporters Committee*. See *id.*; cf. Gov't Code § 411.082(2)(B) (information relating to routine traffic violations not excepted from release under section 552.101 in conjunction with common law privacy and *Reporters Committee*). In this instance, however, we believe that the requestor has a right of access to some of the information at issue.

Section 411.114 of the Government Code allows, among other things, the Texas Department of Family and Protective Services ("DFPS") to obtain criminal history record information ("CHRI") concerning individuals who are the subjects of a report of abuse or neglect of a child. Gov't Code § 411.114(a)(4), (a)(2)(I). CHRI consists of "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." See generally Gov't Code § 411.082(2). In this case, the two named individuals are the suspects in the submitted reports of abuse or neglect of a child. We conclude that section 411.114 of the Government Code gives the requestor a right of access to a portion of the requested information. See Gov't Code § 411.114; see also Gov't Code § 411.082(2). Therefore, the department must release information from the submitted documents pertaining to the named individuals as possible suspects, arrestees, or criminal defendants that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. See Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).² Information pertaining to the named individuals as possible suspects, arrestees, or criminal defendants that does not show the type of allegation made or whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions must be withheld under section 552.101 and the holding in *Reporters Committee*. See *Reporters Comm.*, 489 U.S. 749; cf. Gov't Code § 411.082(2)(B).

Section 552.101 also encompasses information made confidential under other statutes. Criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. See Gov't Code § 411.083.

² We note that because the requestor has a special right of access to this information in this instance, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Some of the information submitted for our review, which we have marked, is CHRI generated by TCIC and NCIC. Accordingly, the information we have marked concerning individuals other than the two persons named in the request is excepted from required public disclosure by section 552.101 of the Government Code.

You claim that some of the additional records at issue, as well as portions of the information that are subject to the above right of access, are confidential under section 261.201 of the Family Code. Section 261.201 provides in part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Because some of the information at issue consists of reports of alleged or suspected abuse or neglect under chapter 261, this information is generally confidential and not subject to public release under the Act. *See id.* However, section 261.201(a) also provides that information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.*

In this instance, DFPS, in its request letter to the department, informs the department that it is seeking the requested information in relation to a legal matter concerning the welfare and custody of two children who are the subjects of the submitted reports of abuse and neglect. DFPS has submitted documentation to the department showing that the information is

requested for the purposes of an adversary proceeding under sections 262.201 and 262.205 of the Family Code. Consequently, we find that DFPS has requested the submitted information for purposes consistent with the Family Code and applicable state laws. Accordingly, the department may not withhold the information at issue from DFPS under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.³

The submitted information contains social security numbers that may be confidential under federal law. The 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

The submitted records also contain information that is excepted from disclosure under section 552.130 of the Government Code, which provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a)(1), (2). The department must withhold the Texas driver's license numbers, vehicle identification numbers, and license plate numbers that we have marked under section 552.130.

In summary, the department must release information from the submitted documents pertaining to the named individuals as possible suspects, arrestees, or criminal defendants that shows the type of allegation made and whether there was an arrest, information,

³As with the criminal history record information discussed above, we note that because the requestor has a special right of access to this information in this instance, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

indictment, detention, conviction, or other formal charges and their dispositions. Information pertaining to the named individuals as possible suspects, arrestees, or criminal defendants that does not show the type of allegation made or whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions must be withheld under section 552.101 and the holding in *Reporters Committee*. The information we have marked concerning individuals other than the two persons named in the request is excepted from required public disclosure by section 552.101 of the Government Code. Social security numbers may be confidential under federal law. The department must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released to this requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

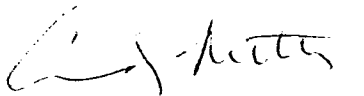
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/AEC/krl

Ref: ID# 225194

Enc. Submitted documents

c: Ms. Sarah Hopkins
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(w/o enclosures)